



**COMMENTS
ON BXA'S PROPOSED REGULATIONS
CONCERNING ENCRYPTION ITEMS
TRANSFERRED FROM THE U.S. MUNITIONS LIST
TO THE COMMERCE CONTROL LIST**

Docket No. 960918265-6366-03

RIN 0694-AB09

THE DIRECT MARKETING ASSOCIATION, INC.

February 13, 1997

For more information, contact:

Gerald Cerasale
Senior Vice President, Government Affairs
Direct Marketing Association, Inc.
1111 19th Street, N.W., Suite 1100
Washington, DC 20036
202/955-5030

Counsel:

Ronald L. Plessner
James J. Halpert
Piper & Marbury L.L.P.
1200 19th Street, N.W.
Washington, DC 20036
202/861-3900

**COMMENTS ON BXA'S PROPOSED REGULATIONS
CONCERNING ENCRYPTION ITEMS
TRANSFERRED FROM THE U.S. MUNITIONS LIST
TO THE COMMERCE CONTROL LIST**

THE DIRECT MARKETING ASSOCIATION, INC.

FEBRUARY 13, 1997

The Direct Marketing Association (The DMA), the largest trade association for businesses interested in direct marketing and database marketing, is pleased to respond to the Bureau's notice of its interim rule regarding export controls on encryption.

The DMA represents more than 3,000 United States corporations as well as 600 corporations from 49 other countries. The DMA members use all media to reach their customers and prospects—mail, telephone, direct response TV, radio, and home shopping networks, as well as cyberspace. With direct marketing in the U.S. now generating nearly \$1.2 trillion in sales annually, it is growing faster than many industries.

The DMA's members are very excited about the promise electronic commerce holds for selling American products and services to customers worldwide. The DMA's members include many companies with significant online presences, including the major commercial online providers and some of the major commercial web sites on the Internet.

Because little new infrastructure and capital investment are needed to reach foreign customers through electronic commerce, direct marketing can rapidly make additional contributions to U.S. competitiveness in this new medium. Indeed, electronic commerce offers the most promising avenue for overcoming foreign distribution oligopolies, such as Japanese *keiretsu*, that block the sale of superior U.S. products and services in many important markets. However, the success of electronic commerce depends in part upon adoption of market-based public policies that encourage, rather than discourage, development of this medium of exchange.

One of the essential elements for the success of electronic commerce is deployment of robust encryption in which consumers and businesses alike have confidence. Unless buyers and sellers have confidence in the security of the medium, they will be far less willing to engage in transactions through this wonderful new means of communication. For this reason, The DMA has a significant interest in the development of policies that encourage, rather than discourage, deployment of encryption demanded by the global Internet marketplace.

Unfortunately, BXA's proposed regulations do not meet this test. Taken as a whole, the new regulations impede, rather than encourage, deployment of encryption demanded by the global marketplace. The proposed regulations continue to condition export of robust encryption on inclusion of key recovery or key escrow features which may not be acceptable to potential foreign customers for DMA members' products and services. Furthermore, the proposed interim relief -- export of 56 bit key length encryption -- is substantially below the encryption strength normally used on the Internet today. Finally, the proposed rules continue a highly regulatory approach to development of encryption for the global marketplace, including U.S. government involvement in encryption standards and some restrictions on global interoperability.

The DMA appreciates the Administration's concern that encryption exported abroad may in some cases be used in ways detrimental to national security. However, in light of the difficulty preventing the spread of information and software in the information society in which we live, The DMA questions whether regulatory approaches, such as the one set forth in the proposed regulations, can be effective in preventing entities and individuals hostile to our national security from obtaining strong encryption. Moreover, as the National Research Council noted just last year, deployment of robust encryption will also produce significant benefits to our national security and important benefits in preventing computer crime.

For these reasons and because of the enormous economic stakes in this area, The DMA urges BXA, and the Administration generally, to rethink its proposed encryption policy, and to consider a more market-oriented approach to the problems and opportunities posed by the

deployment of strong encryption for global electronic commerce. The DMA would be happy to work with BXA and the Administration in this endeavor.